

When Police Question Children

Are Protections Adequate?

When 11-year-old Ryan Harris's body was found on a summer day in 1998, the demand for swift police action resonated throughout the country. Fourteen days later Chicago police announced that two boys, ages 7 and 8, had been charged following their confessions to the heinous crime. Chicago Police Sergeant Stanley Zaborac said, in a statement that would later seem prophetic, that the confessions contained information "that would only be known to the detectives or perpetrators."¹ Within a month new evidence revealed that the boys could not have committed the crime to which they had "confessed."

Although the boys were younger than the typical child defendant, this well-publicized case highlights the problematic use of police interrogation procedures with children. Incriminating statements were extracted from these innocent children through the use of routine police procedures designed to elicit confessions from adults. Unfortunately, the Chicago case is not an isolated incident. In 1996, 11-year-old Lachesha Murray was sentenced to 25 years' incarceration for injuring another child. This conviction, based in part on a "confession" elicited by experienced homicide detectives during a lengthy interrogation while Lachesha was separated from her parents, was reversed in 1999.²

Procedures that encourage innocent children to confess undermine the integrity of the juvenile justice system. While it has been recognized that children are not competent to make most legal decisions for themselves,³ there has been less acknowledgment of this limitation during the critical investigatory stages of a criminal case. Although the arrest rate for violent juvenile crime has decreased by 23 percent since 1994, public hysteria, fueled by media images of young "super-predators," has resulted in harsher penalties, longer sentences, and adult prison terms for juvenile offenders.⁴ Currently, every state allows juveniles to be tried as adults in certain circumstances. Since 1992, 40 states have significantly increased the list of offenses now considered serious enough to be tried as an adult and/or lowered the age for which juveniles may be tried in adult criminal court. For example, Texas statutes allow children as young as 10 to be subject to adult penalties.⁵ The changing emphasis of the juvenile court from rehabilitation to punishment increases the stakes for today's children.

Psychological research on children's memory, suggestibility, and understanding of *Miranda* leads the authors to believe that children, especially those 12 and younger, are particularly susceptible to police interrogation procedures designed to elicit confessions from adults. Young children more easily succumb to suggestion, trickery, and coercion, resulting in false, self-incriminating statements. Such techniques may even alter children's recollections, depriving fact-finders of an unadulterated narrative of the events under investigation. Given the increasingly punitive sanctions applied to younger children throughout this country, we can no longer afford to ignore the impact of even well-intentioned interrogation procedures designed for adults but used with children suspected of committing serious crimes.

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The highly publicized Chicago case of Ryan Harris highlights the problematic use of police interrogation techniques with children, especially in high-stakes cases. Although the defendants in this case were younger than the typical child defendant, the case is not unusual in that children were interviewed by police who employed interrogation tactics designed to elicit confessions from adults.

In the case of *In re Gault* (1967) the U.S. Supreme Court warned that special care was required when police interrogate children. Likewise, psychological research on children's memory and suggestibility leads us to believe that children may be particularly susceptible to the tactics used in police interrogations. Procedures that encourage innocent children to confess or that mask accurate recall of critical facts undermine the integrity of the juvenile justice system. The extensive research on children's memory and suggestibility has recently been applied to the development of standards for interviewing alleged child victims in an attempt to elicit complete and accurate narrative reports. The authors explore the potential applicability of these interview techniques for developing a more appropriate methodology for police questioning of child suspects.

This article was supported in part by a grant from the Soros Justice Fellowship Program of the Open Society Institute's Center on Crime, Communities and Culture. ■

This article examines current protections afforded young children confronted with police interrogation procedures. *Miranda*, the “totality-of-the-circumstances” test, and the “interested-adult” rules are examined and found wanting. Because of the vulnerability of children, the authors argue that children should be provided with greater protection and police with enhanced training. The article describes recent developments in interview techniques that have been designed to elicit complete and accurate narrative reports from child victims and discusses the applicability of these techniques to police interrogation of juvenile suspects.

MIRANDA'S IMPACT ON INTERROGATION AND CONFESSIONS

Prior to *Brown v. Mississippi* in 1936,⁶ courts rarely scrutinized police procedures for extracting confessions. Although courts expressed concern that “involuntary” confessions were unreliable as evidence of guilt, courts rarely looked beyond the confession to the methods used to elicit the incriminating statement.⁷ In *Brown v. Mississippi*, the first of the “due process” confession cases, the Court could no longer ignore the egregious police practice of beating suspects to extract confessions. The exclusion of these confessions as violations of the suspects’ due process rights put police on notice that the use of force or the threat of force would no longer be tolerated as part of police interrogation procedures.⁸ Nevertheless, suspects were still held incommunicado, subjected to endless hours of interrogation, and denied food or sleep. As cases challenging these procedures made their way through the judicial system, courts began to focus on the coercive police practices rather than the reliability of the statements as the basis for excluding confessions.⁹ As Justice Frankfurter stated in 1952, “Coerced confessions offend the community’s sense of fair play and decency.”¹⁰

In 1966, the Supreme Court, frustrated with attempts to assess the circumstances of the interrogation and the characteristics of the accused when determining whether a confession was voluntary, established procedural safeguards to protect the rights of suspects during custodial interrogations.¹¹ In *Miranda v. Arizona*, the Court prescribed a system of warnings to “assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.”¹² The Court held that a person in custody, about to be subjected to police interrogation, must be informed of his right to remain silent:

[S]uch a warning is an absolute prerequisite in overcoming the inherent pressures of the interrogation atmos-

phere. . . . The warning of the right to remain silent must be accompanied by the explanation that anything said can and will be used against the individual in court. This warning is needed in order to make him aware not only of the privilege, but also of the consequences of foregoing it. The circumstances surrounding the in-custody interrogation can operate very quickly to overbear the will of one merely made aware of his privilege by his interrogators. Therefore, the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege. . . . [I]t is necessary to warn him not only that he has the right to consult with an attorney, but also that if he is indigent a lawyer will be appointed to represent him.¹³

The *Miranda* warnings represented an attempt to exert control over law enforcement practices and to deter police from disregarding the rights of the individual.¹⁴ The Court stressed that “in-custody interrogation is *psychologically* rather than physically oriented” (italics added) and quoted from police training manuals that described interrogation tactics “designed to put the subject in a psychological state where his story is but an elaboration of what the police purport to know already—that he is guilty.”¹⁵

Miranda prescribed limitations on custodial interrogations as well as provided courts with guidelines for admitting statements obtained during them.¹⁶ Despite concern from law enforcement that *Miranda* warnings would undermine police effectiveness, empirical studies show no decrease in the rate of confessions in the post-*Miranda* era.¹⁷ Police routinely read the warnings to suspects, and the mere formulaic recitation satisfied many courts.

In the post-*Miranda* era, the art of interrogation has become increasingly more sophisticated. Inbau, in his widely used police interrogation training manual now in its third edition, details psychological tactics and techniques for eliciting incriminating statements.¹⁸ For example, the manual describes “minimization” techniques that make light of the situation in order to reduce the suspect’s fears and anxieties and prompt conversation with the interrogators.¹⁹ Alternative techniques that emphasize punishment are designed to raise the suspect’s anxiety level and reduce the likelihood that the suspect will remain silent.²⁰ If interrogators are still not successful at eliciting a statement, they are taught to recast the scenario, sympathizing with the suspect and condemning the victim, placing blame on someone other than the suspect or seeking an admission to a noncriminal act.²¹ If the suspect is a juvenile, Inbau urges the interrogator to spend time with the parents prior to the interview to gain their support and cooperation. The interrogator should explain to parents that “his only interest in talking to the youth is to ascertain the truth” and should emphasize that “no one

blames the parents or views them as negligent in the upbringing of their child, all children at one time or another have done things that disappoint their parents, and everyone (the interrogator as well as the parent) has done things as a youth that should not have been done."²² Once the parent has been co-opted, the "principles ... discussed with respect to adult suspects are just as applicable to the young ones."²³

When *Miranda* warnings are given, a custodial interrogation proceeds only if the suspect waives his or her constitutional rights.²⁴ For a waiver to be valid, it must be demonstrated that the waiver was made "voluntarily," "knowingly," and "intelligently."²⁵ As the Supreme Court stated in *Moran v. Burbine*, the State must prove, that under the "totality of the circumstances surrounding the interrogation," a waiver was "the product of a free and deliberate choice rather than intimidation, coercion or deception" and that the waiver was made with "a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it."²⁶

However, defining a knowing, intelligent waiver when the suspect is a child has not been easy for the courts. Despite research evidence indicating that many children do not fully understand the implications of the *Miranda* warnings,²⁷ courts rarely question a child's comprehension of the nature of the rights he or she is abandoning when signing the waiver.

EVOLUTION OF A CHILD'S RIGHT AGAINST SELF-INCRIMINATION

Juvenile confessions have long been a problematic issue for the courts. After the creation of the juvenile courts, police and judges routinely admonished children to "admit" their wrongdoing as a critical step toward their rehabilitation. Under the guise of "treatment," these confessions often became the basis for extensive periods of confinement for relatively minor offenses. By 1967, when 15-year-old Gerald Gault faced the loss of liberty until age 21 for making a "lewd" phone call (a crime that would have resulted in a \$50 fine or two months' imprisonment for an adult facing the same charge), the Supreme Court recognized that the rhetoric of the juvenile court differed significantly from the reality.²⁸ The court noted: "[U]nbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."²⁹

In 1967, the Supreme Court held that juveniles were entitled to elementary due process protections routinely afforded adults under the Fourteenth Amendment, including the right to counsel, advance notice of the charges, an opportunity to confront and cross-examine witnesses, and the privilege against self-incrimination.³⁰

The Court recognized that the privilege against self-incrimination was critical for children subjected to police interrogation procedures:

One of its purposes was to prevent the state, whether by force or by psychological domination, from overcoming the mind and will of the person under investigation and depriving him of the freedom to decide whether to assist the state in securing his conviction. It would indeed be surprising if the privilege against self-incrimination were available to hardened criminals but not to children.³¹

In assessing the voluntariness of a confession, the court scrutinizes the "totality of the circumstances" surrounding the interrogation to ensure that the decision to confess "was the product of a free and deliberate choice rather than intimidation, coercion or deception."³² In 1948, in *Haley v. Ohio*, the Court reasoned that the age of the suspect was a critical factor that must be taken into account.³³ In *Haley*, police questioned a 15-year-old "lad" in relays starting at midnight, denied him access to counsel, and confronted him with confessions by co-defendants until he confessed early the next morning.³⁴ The Supreme Court reversed the conviction, holding that a confession obtained under these circumstances was involuntary, and cautioned trial judges to be particularly sensitive to the vulnerability of juveniles pitted against experienced police interrogators:

What transpired would make us pause for careful inquiry if a mature man were involved. And when, as here, a mere child—an easy victim of the law—is before us, special care in scrutinizing the record must be used. Age 15 is a tender and difficult age for a boy of any race. He cannot be judged by the more exacting standards of maturity. That which would leave a man cold and unimpressed can overawe a lad in his early teens. This is the period of great instability which the crisis of adolescence produces.... [W]e cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the victim first of fear, then of panic.³⁵

In 1962 in *Gallegos v. Colorado*,³⁶ the Court reiterated that the age of the accused constituted a special circumstance that affected the voluntariness of confessions and reemphasized the vulnerability of youth.

But a 14-year-old boy, no matter how sophisticated ... is not equal to the police in knowledge and understanding ... and is unable to know how to protect his own interests or how to get the benefits of his constitutional rights. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had.³⁷

In *Gault*, the Court admonished that “the greatest care must be taken to assure that the [minor’s] admission [is] voluntary.”³⁸ Although *Miranda* never mentions juveniles, the Court’s decision to extend the privilege against self-incrimination to juveniles in *Gault* prompted courts and legislators to develop juvenile waiver tests. Some states opted for the totality-of-the-circumstances analysis as articulated in *Haley* and *Gallegos*.³⁹ These states considered a variety of factors but gave special consideration to the child’s age, education, intelligence, and experience when evaluating the validity of the waiver of his or her constitutional rights. Other states sought a more objective standard, invalidating juvenile waivers if they were given without an attorney, a parent, or an interested adult present.⁴⁰

The underlying rationale of the interested-adult rule is that the immaturity of juveniles significantly affects both their ability to fully understand their rights and their susceptibility to the compelling atmosphere of police interrogation. Theoretically, an interested adult protects the child from police coercion, understands the protections afforded in the *Miranda* warnings, and understands the consequences of waiving those rights. Although the absence of an interested adult may invalidate a waiver, the presence of an interested adult does not necessarily guarantee the validity of the waiver. For instance, it has been anecdotally observed that parents often push their children to “talk” to authorities and to “tell the truth.” These parents are operating from a moral standpoint that it is best to tell the truth and often are unaware of the legal consequences when their children provide statements to police. As such, they function to aid the interrogation rather than acting as adults protecting their children’s rights.

Research by Grisso and Ring⁴¹ has supported the anecdotal observation that parents may not protect a juvenile during police encounters. Surveyed parents reported a belief that their role was to pressure their children to cooperate with police. These parents appeared to be motivated by a stance that emphasized respect for authority and acceptance of responsibility for wrongdoing. Furthermore, in the almost 400 juvenile interrogations examined, 70 to 80 percent of parents offered no advice to their children, and when parental advice was given, parents were far more likely to advise their children to waive their rights than to assert them.

This situation was highlighted in a Chicago murder case that has recently reentered the spotlight following the questions raised by the Ryan Harris case. In this case the mother of an 11-year-old boy agreed to let police question her son. The boy allegedly confessed to the crime and was convicted despite questionable interrogation techniques, contradictory statements, and a startling lack of physical

evidence. Regarding her decision to allow police to question her son, the mother was recently quoted by reporters as stating, “I’m trusting the police. I never dreamed this would happen. It was the biggest mistake I will ever make.”⁴²

Courts have faced several issues in defining an “interested adult.” Can a grandparent or an older sibling be an interested adult? What if the parent is the person who initiated the charge? What if the “interested adult’s” capacities have been seriously diminished by alcohol or drugs?⁴³ In 1979, the Supreme Court in *Fare v. Michael C.* held that a probation officer is not an “interested adult” and therefore the juvenile’s request to consult with the probation officer did not constitute an invocation of his Fifth Amendment rights.⁴⁴ Significantly, the Court also retreated from its previous solicitous position regarding juveniles in *Haley* and *Gallegos* and held that the adult standard for the totality-of-the-circumstances test was sufficient to assess the validity of a juvenile’s waiver of his or her legal rights.⁴⁵ The Court rejected the premise that psychological or developmental differences between adults and juveniles warranted special procedural protections.⁴⁶ Under this approach, no single factor such as age or immaturity is controlling; rather, the courts look to all the circumstances surrounding the elicitation of the confession. Currently, the majority of states adhere to some variation of the totality-of-the-circumstances test outlined in *Fare*.

Even when states have a per se exclusionary rule invalidating a child’s waiver in the absence of an interested adult, the waiver is required only in the context of a custodial interview. In the authors’ experience, police officers frequently insist that the child was not “in custody” when interrogated, thereby eliminating the necessity for *Miranda* warnings or a valid waiver. The Court defined a custodial interrogation as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise *deprived of his freedom of action in any significant way*” (italics added).⁴⁷ Custody exists when “a reasonable person [would] have felt he or she was not at liberty to terminate the interview and leave.”⁴⁸ Typically, courts look to the circumstances surrounding the questioning to determine whether the suspect is in custody and will frequently try to assess “whether, at the time the incriminating statement was made, the suspect was free to end the interview by leaving the locus of the interrogation or by asking the interrogator to leave.”⁴⁹ It is hard to imagine that a child, placed in a room with one or more adult authorities for an extended period of time and subjected to questioning, would understand that he or she is really free to leave or to end the interrogation.

Although the State should bear a heavy burden when establishing that a juvenile’s waiver of rights under *Miranda*

was made intelligently, knowingly, and voluntarily, there are many examples of suspect confessions that have been admitted under the *Fare* totality-of-the-circumstances analysis. For instance, the District Court of Appeal of Florida recently held that the trial court did not err when it determined that a 10-year-old with an intelligence score of 69 understood and waived his *Miranda* rights, even when there was no written acknowledgment of *Miranda* warnings and no adult was present.⁵⁰ The court held that the child was treated fairly because he had been given food during the six hours police held him. Another example is the previously noted Texas case of 11-year-old Lachesha Murray, who was sentenced to 25 years' incarceration for injury to a child based on a coerced confession. Lachesha was kept away from her family for four days and was interrogated by experienced homicide detectives. She was never given *Miranda* warnings, and, in violation of state law, no adult was present during the interrogation. However, Texas courts admitted the confession and upheld the conviction, finding that Lachesha was not "in custody" when interviewed.⁵¹ The appellate court recently reversed Lachesha's conviction.

PSYCHOLOGICAL RESEARCH AND THE "KNOWING, INTELLIGENT, VOLUNTARY" WAIVER

As previously noted, *Miranda* warnings were created as a procedural protection for adults and extended to children in *Gault*. Although these warnings typically precede custodial police questioning, practitioners have long surmised that the warnings do not necessarily function as a comparable procedural safeguard when applied to juveniles.⁵² Although research in this area is still in its infancy, the work completed to date appears to support the notion that juveniles may be at a disadvantage when asked to waive rights to silence and counsel voluntarily, knowingly, and intelligently.

Research findings consistently demonstrate that *Miranda* warnings are not well understood by children, especially those 14 and under or older adolescents with low intelligence scores.⁵³ These vulnerable groups were found to perform significantly more poorly than adults, including adults with low intelligence (when compared to juveniles with low intelligence). Juveniles, "compared with adults, demonstrated significantly poorer comprehension of the nature and significance of *Miranda* rights."⁵⁴ A similar study examining Canadian youth also found that few juveniles fully understood the *Miranda* warnings, and that those whose understanding was poor were more likely to waive their rights.⁵⁵

Additionally, multiple factors may interact to affect a youth's voluntary waiver of *Miranda* rights. For instance, Grisso found that the relationship between understanding of the *Miranda* warnings and prior experience with the justice system was not a simple one. While some youths learned a great deal from their legal experiences, others did not. It is likely that low cognitive ability may play a role in the failure of some youths to learn from their experiences.⁵⁶

Research findings on the *Miranda* waiver have noted that children may be far more likely to waive their *Miranda* rights than adults. Grisso and Pomicter found that about 90 percent of youth who were asked to make statements regarding suspected felonies waived their rights to silence and counsel.⁵⁷ This finding can be contrasted with research of adult suspects that found waiver rates closer to 60 percent.⁵⁸ Likewise, Ferguson and Douglas concluded that only "a small percentage of juveniles is capable of knowingly and intelligently waiving *Miranda* rights."⁵⁹ This study found that over 90 percent of the juveniles (approximately 14 years old) interrogated by police waived their rights and that the same number did not understand the rights they waived. In this study juveniles had the most difficulty with the element of the warning that addressed their right to have an attorney present during questioning.

As the Court held in *Haley* and *Gallegos*, juveniles may also be at a social disadvantage in the interrogation situation because of their increased vulnerability to the coercive pressures of adult authority figures.⁶⁰ From early childhood on, children are taught to answer questions directed to them by adults. Police officers often occupy an elevated position of power relative to children. This differential may be especially prominent for youth who have experienced or witnessed more negative and harassing interactions with police. For instance, King and Yuille⁶¹ found that when a "status differential" exists in the interview context, lower-status individuals are more likely to defer to the authority of higher-status individuals. To cite an example, a youth, asked about his prior interaction with police during questioning, stated, "They the police, you do what they say."⁶² Moreover, research indicates that when an adult interviewer presents himself or herself as authoritarian or unfriendly, children have more difficulty disagreeing with the adult.⁶³

Additionally, research supports the notion that adolescents' failure to consider long-term consequences may compromise youthful decision making.⁶⁴ A failure to consider consequences may be due to a lack of understanding of the consequences as well as a failure to consider them. For instance, a child may be more easily led into making damaging statements under the pretense that if he or she tells the police what they want to know the child can go

home. In this case, the opportunity to go home is far more compelling to a child than the long-term consequences, which the child may not appreciate because of a lack of experience.

Courts may confuse a child's age or physical stature with maturity, yet many youth involved with the legal system are disadvantaged cognitively and emotionally,⁶⁵ making them far less mature and astute than their same-age peers. Youths such as these may be just as lost and confused and susceptible to manipulation as young children when confronted by the complexities of the legal system and the coercive context of police questioning. Furthermore, a defendant's case may be disadvantaged by the negative bias that develops subsequent to the introduction of confession evidence, even if that evidence is later deemed inadmissible.⁶⁶

In summary, the research noted above points to potential disadvantages faced by juveniles in maintaining autonomy, exhibiting informed decision making, and protecting their own interests in encounters with police. These findings highlight the likelihood that many juveniles, especially preteens and those with cognitive and emotional disabilities, do not stand on the same footing as adults when waiving their constitutional rights. As such, caution is warranted when assuming that administration of *Miranda* warnings provides a valid safeguard against self-incrimination or false confession among these populations.

RESEARCH ON CHILDREN'S SUGGESTIBILITY

For years courts have questioned the veracity and credibility of statements made by child victims.⁶⁷ In the early 1980s, several highly publicized child abuse cases (such as the McMartin Preschool and Scott County cases) fueled the interest of researchers when it was observed that leading and suggestive questioning by adult interviewers may have led the alleged child victims to make false accusatory statements. Researchers began to explore issues of children's memory and suggestibility in relation to their abilities to accurately report events.

Almost two decades of intensive research in this area have produced a vast body of literature. Generally, findings indicate that when interviews are conducted appropriately, even very young children can resist mild suggestion. Alternatively, inappropriate interviewing can lead children to make statements that may misrepresent the facts and potentially incriminate innocent defendants.⁶⁸

A variety of interviewing techniques and circumstances have been found to be damaging to the accuracy of children's reports. For instance, studies have demonstrated the risk of eliciting inaccurate information when interviews

include repeated, coercive, leading questioning; a negative emotional tone; peer pressure; high-status or biased interviewers; or repeated interviews.⁶⁹ In addition, in extreme circumstances case evidence⁷⁰ and research⁷¹ indicate that adult questioning may significantly alter children's memories of events.

Although age-related findings consistently indicate that younger children are at greater risk for increased suggestibility, findings have also made it clear that knowing a child's age is not enough. Suggestibility is not a trait, and a child's ability to provide accurate reports is a very complex phenomenon that must be viewed in light of a host of situational and psychological factors.⁷² For instance, researchers have studied the context of the interview, biases held by interviewers, the emotional tone of the interview, the social status of the interviewer, the interviewer's presumed knowledge of the event, and the individual child's personality, capacity, memory, and present state of mind.⁷³

It is important to note that suggestive techniques used in these studies would typically be considered mild compared to the coercive tactics used in police interrogations. Owing to the ethical obligations of research, studying more extreme situations that closely mimic police interrogation, such as the effects of the use of threats, bribes, and intimidation on children's narratives, has not been possible.

GAPS IN INTERVIEWING PROCEDURES USED WITH CHILD SUSPECTS VERSUS ALLEGED CHILD VICTIMS

Following the highly publicized child abuse cases of the early 1980s, interviews of child victims were subject to scrutiny and individuals who interviewed alleged child victims were cautioned about the use of leading and suggestive interview techniques. More recently, the research findings highlighted above have been applied to the development of suggested practices for interviewing child victims.⁷⁴

Although there are clear parallels between the interviewing of alleged child victims and young suspects, the gap in interviewing practices between these two groups of legally involved children is significant. For instance, police questioning of young suspects offers none of the interviewing safeguards that are currently expected in the questioning of alleged child victims.⁷⁵ These very different practices are employed despite a similar potential for a child to make falsely incriminating statements. The primary difference is that in the case of a child suspect, the statements are potentially self-incriminating rather than potentially incriminating of another.

Techniques that would be considered brazenly suggestive, manipulative, and coercive in light of the findings

from research on child victims' reports in legal settings are rarely questioned in the context of a suspect's interrogation.⁷⁶ For instance, questioning of an alleged victim of sexual abuse would be highly suspect if it suggested new information (for example, "We have reason to believe that your teacher has been touching you in a bad way") or pressured the child to agree with the suggested information ("Why don't you be a good girl and help us out. We need you to tell us the ways he might have touched you"). It would be further determined to be highly coercive if the child were then rewarded (given praise or food or told he or she could go home) for providing certain information. Nevertheless, these practices are often used in police interrogations even when young children are questioned as suspects.⁷⁷

The research on child victims suggests that youth questioned under these conditions will have a difficult time maintaining autonomy and resisting the manipulation of adult interviewers. Rather than prefacing the interrogation with introductory comments that give the child suspect permission not to answer a question, police interrogators groom juvenile suspects to be easily manipulated. Juvenile suspects may be intimidated into acquiescence or may be led to believe that the interrogator is a friend and there to help. In either scenario, the police interviewer rarely takes a neutral stance. Police questioning may follow only the desired line of inquiry in order to confirm the preferred hypothesis (such as that the suspect committed the offense), rather than open-mindedly exploring all potential hypotheses. Likewise, the young suspect may be rewarded for certain responses. In a particularly compelling tactic, a child may be told that he or she will be allowed to go home after telling the police what they want to hear. Police may introduce new material (which may be true or false) to influence a child's statements rather than avoiding potentially suggestive information. For instance, in the *Harris* case, the 8-year-old suspect was provided with information from statements made by the 7-year-old suspect and consequently changed his story to more closely match that of his peer. Police may work in teams or co-opt parents in their endeavors, placing even more pressure on children in custody. Young detainees may be misled about their role in an investigation, being interviewed initially as if they are witnesses when they are actually being considered as suspects. In this situation children have virtually no protections.

SUGGESTED PRACTICES FOR INTERVIEWING CHILDREN

Overall, the research discussed above has led to the exercise of a great deal of care when potential child victims are

questioned. It has been applied to suggestions for conducting nonleading interviews⁷⁸ and for developing guidelines for child interviewing in legal contexts.⁷⁹ These interviews with child victims, typically conducted by legal or mental health professionals when sexual abuse has been disclosed, are now more often videotaped in their entirety and are subject to scrutiny by all parties involved in the proceedings. The wording of questions and the context of questioning of alleged victims is now considered critical, and suggestive or leading questions and conditions are subject to attack by the defense.

From a recent review of the literature, Reed⁸⁰ identified implications for interviewing children in a manner that minimizes suggestibility and thereby produces more accurate reports. It was suggested that the interview setting should be comfortable, private, informal, and free from distractions. The interviewer should approach the interview with an open mind and consider alternative hypotheses. He or she should be friendly with the child but should clearly avoid selectively reinforcing statements made by the child that support one hypothesis (for example, that the child was abused), while selectively ignoring statements that do not support a favored hypothesis. Expectations should be clarified at the outset of questioning. For instance, interviewers should emphasize the importance of being truthful; explain that they are uninformed and do not know what happened; encourage the child to admit confusion or lack of memory rather than guessing; advise the child that a repeated question does not mean the child's initial response was incorrect; give permission to the child to refuse to answer questions; and encourage the child to disagree with the interviewer and correct the interviewer when facts are misstated. Questioning strategies should take into account that misleading can occur in any direction depending on the nature of the interviewer's suggestions. Highly leading or coercive questions, as well as repetitive suggestions and multiple interviews, should clearly be avoided. Interviews should be developmentally appropriate and begin with open-ended questions. After the child's narrative is elicited, focused questions may be asked if needed but only if justified by previous information. All relevant questions and responses should be well documented. These strategies are thought to be necessary regardless of the child's age.

Thus, the preferred interview situation is one in which children are interviewed one time, in a neutral environment, free from pressure to produce a given response, asked developmentally appropriate questions as well as given permission to disagree with interviewers and to state that they do not know or do not remember when indeed they do not. This interview format prepares the child for the interview and aids in the resistance of suggestion.

When prepared and questioned in this manner, a child is more likely to provide an accurate, reliable report that will advance the fact-finder's investigation.

SUGGESTED MODIFICATIONS OF POLICE PROCEDURES

The above discussions point to the need for more appropriate procedural safeguards when police question juvenile suspects. First, *Miranda* warnings should be explained in detail with developmentally appropriate language, not just read or recited in rote fashion. Too often juveniles (and their parents) do not understand the warnings as they are currently written and do not know what rights they are waiving. A question-and-answer format, designed to elicit more than a yes-or-no response, may ensure there is a minimal level of comprehension before police officers proceed with the custodial interrogation.

Second, interrogation of juveniles, especially young, cognitively delayed, or emotionally disturbed suspects, should be conducted in a nonleading manner. Tactics routinely used with adults such as manipulation, rewards, and intimidation may unduly pressure children. Individuals conducting the questioning should be trained in appropriate techniques. The interview techniques outlined above can be helpful in instituting interview procedures that are appropriate for use with vulnerable juvenile suspects.

Third, interrogations should be videotaped in full. Following the Ryan Harris murder case in Chicago, it was proposed that confessions be videotaped;⁸¹ yet it should be understood that videotaped confessions are misleading unless they are accompanied by a taping of all questioning and encounters leading up to the confession.⁸² Care must be taken to avoid the use of biasing camera angles (*i.e.*, direct view of suspect and omission of interrogator).⁸³ Only when a full, videotaped record is obtained and viewed can the court be assured that the confession was not a product of a coercive interrogation.

Finally, the one safeguard that would most clearly protect children's due process rights during police questioning is the mandatory presence of counsel.

CONCLUSION

Once a child "confesses," the procedural safeguards of *Miranda*, the totality-of-the-circumstances, and the interested-adult analyses offer little protection. Interrogation procedures designed for adults but used with children increase the likelihood of false confessions and may even undermine the integrity of the fact-finding process. *Miranda* warnings and the subsequent interrogation procedures should be modified to compensate for the increased susceptibility and vulnerability of the child sus-

pect. Police, district attorney offices, and mental health professionals across the country have recognized that child victims differ from their adult counterparts and have modified interview procedures to compensate for the child's limitations in the questioning context. These techniques provide a model for modifying police interrogation procedures with child suspects.

NOTES

1. Alex Kotlowitz, *The Unprotected*, The New Yorker, Feb. 8, 1999, at 42.
2. Bob Herbert, *A Child's Confession*, N.Y. Times, Sept. 15, 1998, at 15.
3. Recognizing children's limitations, states have passed laws restricting children's ability to enter into binding contracts, have delegated children's educational rights to their parents, and have mandated age requirements for driving, buying alcohol, and buying cigarettes.
4. Louise D. Palmer, *In Court, Youths Losing Their Innocence; Demands for Stricter Punishment Send More Juveniles to Adult Jails*, B. Globe, Jan. 24, 1999, at A10.
5. Patricia Torbet et al., *State Responses to Serious and Violent Juvenile Crime* (Office of Juvenile Justice and Delinquency Prevention 1996).
6. *Brown v. Mississippi*, 297 U.S. 278 (1936).
7. *Id.* at 279.
8. *Id.*
9. *See Ashcroft v. Tennessee*, 22 U.S. 143 (1944) (conviction reversed after 36 hours of continuous interrogation); *see also Watts v. Indiana*, 338 U.S. 49 (1949); *Harris v. South Carolina*, 338 U.S. 68 (1949); *Turner v. Pennsylvania*, 338 U.S. 62 (1949) (court reversed convictions resting on coerced confessions without disputing fact that confessions were probably true).
10. *Rochin v. California*, 342 U.S. 165, 173 (1952).
11. *Miranda v. Arizona*, 384 U.S. 436 (1966).
12. *Id.* at 439.
13. *Id.* at 468-71.
14. *Id.* at 444-45.
15. *Id.* at 450.
16. *Id.* at 450.
17. Louis Sedman, *Brown and Miranda*, 80 Cal. L. Rev. 673, 743-47 (1992).
18. Fred Edward Inbau et al., *Criminal Interrogation and Confessions* (Lippencott et al. eds., 3d ed. 1986).

19. *Id.* at 99–101.
20. *Id.* at 126.
21. *Id.* at 114–18.
22. *Id.* at 139.
23. *Id.* at 137.
24. *Miranda*, 384 U.S. at 444.
25. *Id.*
26. *Moran v. Burbine*, 475 U.S. 412, 421–22 (1986).
27. Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134 (1980).
28. *In re Gault*, 387 U.S. 1 (1967).
29. *Id.* at 17.
30. *Id.*
31. *Id.* at 46.
32. *Id.*
33. *Haley v. Ohio*, 332 U.S. 596, 598 (1948).
34. *Id.*
35. *Id.* at 599–600.
36. *Gallegos v. Colorado*, 370 U.S. 49, 54 (1962).
37. *Id.*
38. *In re Gault*, 387 U.S. at 55.
39. Linda Szymanski, *Test of the Validity of a Juvenile's Waiver of His or Her Miranda Rights*, in NCJJ Snapshot 3(2) (National Center for Juvenile Justice 1998) (currently 16 states use a totality-of-the-circumstances rule); *see also Haley*, 332 U.S. at 596; *Gallegos*, 370 U.S. at 49.
40. *See id.* (currently 11 states use an interested-adult test).
41. Thomas Grisso & M. Ring, *Parents' Attitudes Toward Juveniles' Rights in Interrogation*, 6 Crim. Just. & Behav. 221 (1979).
42. Maurice Possley, *Officer in Harris Case Coaxed Similar Confession in '94*, Chi. Trib., Sept. 10, 1998, at 1.
43. *See, e.g., Commonwealth v. Guyton*, 541 N.E.2d 1006 (Mass. 1989) (sibling who was 13 days shy of 18th birthday could not serve as interested adult); *Commonwealth v. MacNeil*, 502 N.E.2d 938 (Mass. 1987) (grandfather could serve as interested adult); *Commonwealth v. Berry*, 570 N.E.2d 1004 (Mass. 1991) (discussing when a parent might be disabled and unable to serve as interested adult).
44. *Fare v. Michael C.*, 442 U.S. 707, 724 (1979).
45. *Id.* at 725.
46. *Id.* at 725–27.
47. *Miranda*, 384 U.S. at 444.
48. *Thompson v. Keohane*, 516 U.S. 99, 112 (1995).
49. *Commonwealth v. Bryant*, 459 N.E.2d 792, 798 (Mass. 1984).
50. *W.M. v. Florida*, 585 So. 2d 979, 983 (Fla. Ct. App. 1991).
51. Brief for Appellant, In the Matter of L.M. (Tex. Ct. App. 1997) (No. 03-97, 00334-cv).
52. Thomas Grisso, *supra* note 27.
53. Thomas Grisso, *Juveniles' Waiver of Rights: Legal and Psychological Competence* (Plenum Pub. Corp. 1981).
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